

REMARKS

Applicants have received and reviewed the Office Action dated May 4, 2004. By way of response, Applicants have canceled claims 4 and 32 without prejudice. No additional amendments have been entered. Claims 1-4, 6-9, and 31, 32, and 35-44 are pending. For the reasons given below, Applicants respectfully contend the pending claims are in condition for allowance.

Claims 4 and 32

The Office Action asserts that claim 4 is a duplicate of claim 45 and claim 32 is a duplicate of claim 46. Without acquiescing to this assertion, Applicants have canceled claims 4 and 32.

Allowable Subject Matter

The Examiner indicated claims 45 and 46 contain allowable subject matter. Applicants thank the Examiner for recognizing allowable subject matter.

Claim Rejections Under 35 U.S.C. § 103(a)**U.S. Pat. No. 6,165,483**

The Examiner rejected claims 1-3, 6-9, 31, and 35-44 under 35 U.S.C. § 103(a) as obvious over U.S. Pat. No. 6,165,483 (hereinafter "the '483 patent") in view of Lokkesmoe et al. (WO 94/21122), FSTA abstracts 1999(10):C1223 and Taylor et al. Applicants respectfully traverse this rejection.

Applicants respectfully contend the primary reference employed in the rejection cannot be relied upon in the current rejection. The '483 patent was not published until December 26, 2000. The present application was filed July 12, 2000. Thus, the '483 patent was published after the filing date of the present application and does not constitute prior art under 35 U.S.C. § 102(a) or 102(b). Accordingly, the '483 patent could only constitute prior art under 35 U.S.C. § 102(e).

Even if the '483 patent is prior art under 35 U.S.C. § 102(e), a point not conceded by Applicants, the '483 patent fails to render the claims obvious. A reference that is prior

art only under § 102(e) cannot be used, according to § 103(c), in an obviousness rejection if the subject matter of the cited reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. A clear statement of entitlement to the prior art exclusion by Applicants or a registered practitioner is sufficient evidence to establish the prior art exclusion (Examination Guidelines for 35 U.S.C. § 102(e) (as amended and revised) at IV(5); 1266 TMOG 80, January 14, 2003).

Pursuant 35 U.S.C. § 103(c), Applicants hereby make a clear statement of entitlement to exclude the '483 patent reference as prior art that can be relied upon in a rejection under 35 U.S.C. § 103. The '483 patent is assigned to the assignee of the present patent application. The '483 patent and the present patent application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Therefore, the '483 patent cannot be employed as prior art in support of the current rejection. Accordingly, Applicants respectfully contend the cited references fail to render claims 1-3, 6-9, 31, and 35-44 obvious.

U.S. Pat. No. 6,238,685

The Examiner also rejected claims 1-3, 6-9, 31, and 35-44 under 35 U.S.C. § 103(a) as obvious over U.S. Pat. No. 6,238,685 (hereinafter "the '685 patent") in view of Lokkesmoe et al. (WO 94/21122), FSTA abstracts 1999(10):C1223 and Taylor et al. Applicants respectfully traverse this rejection.

The '685 patent was not published until May 29, 2001. The present application was filed on July 12, 2000. Accordingly, the '685 reference does not constitute prior art under 35 U.S.C. § 102(a) or 102(b).

Even if the '685 reference constitutes prior art under 35 U.S.C. § 102(c), for the same reasons discussed with respect to the '483 patent, the '685 patent cannot be relied upon in a rejection under 35 U.S.C. § 103. The '685 patent is assigned to the assignee of the present patent application. The '685 patent and the present patent application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. Pursuant 35 U.S.C. § 103(c), Applicants hereby make a clear statement of entitlement to exclude the '685 patent reference as prior art that can be

relied upon in a rejection under 35 U.S.C. §103. Therefore, the '685 patent cannot be employed as prior art in support of the current rejection. Accordingly, Applicants respectfully contend the cited references fail to render claims 1-3, 6-9, 31, and 35-44 obvious.

Conclusion

In summary, Applicants submit that each of claims 1-3, 6-9, 31, and 35-46 are in condition for allowance. The Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below, if the Examiner believes that doing so will expedite prosecution of this application.

Respectfully submitted,

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